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CHAD EMPEY

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHAD EMPEY,

Plaintiff,

vs.

ALLIED PROPERTY & CASUALTY  
INSURANCE COMPANY, and DOES 1 to  
50, inclusive,

Defendants.

Case No. 3:11-CV-00733-SC

**JOINT STIPULATION AND [PROPOSED]  
ORDER REGARDING THE HEARING  
AND BRIEFING SCHEDULE FOR  
PARTIAL SUMMARY JUDGMENT  
MOTION AND DISCOVERY AND  
PRETRIAL DEADLINES**

Complaint filed: January 20, 2011

Plaintiff CHAD EMPEY ("Plaintiff") and Defendant ALLIED PROPERTY &  
CASUALTY INSURANCE COMPANY ("Allied") (collectively, the "Parties") through their  
respective counsel present the following stipulation and proposed order regarding the hearing and  
briefing schedule for Defendant's partial summary judgment motion and discovery and pretrial  
deadlines. This stipulation is based on the following:

///

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1 The Parties commenced an Early Neutral Evaluation with Thomas H.R. Denver on  
2 September 23, 2011, and thereafter engaged in mediation activities with Mr. Denver until  
3 November 14, 2011, when the parties were unable to resolve the case at a mediation. As a result,  
4 counsel for the Parties met and conferred on November 15, 2011 in the U.S. Courthouse,  
5 Oakland, pursuant to the Order of Magistrate Judge Donna M. Ryu. Due to the pending  
6 mediation, the court ordered meet and confer was continued to November 15, 2011 from earlier  
7 dates. As stated above, since the case did not settle on November 14, 2011, counsel for the  
8 Parties met and conferred in an effort to resolve all pending discovery disputes. Some progress  
9 was made on November 15, 2011, but the Parties have continued to meet and confer on almost a  
10 daily basis thereafter. Magistrate Judge Ryu adjourned the due date of the filing of a joint letter  
11 to her regarding certain discovery disputes to November 23, 2011. A joint letter is being filed  
12 with Magistrate Ryu on November 23, 2011 for a resolution by her.

13 Due to the Early Neutral Evaluation (that subsequently transformed into a mediation  
14 process), the Parties previously petitioned this Court to modify the pre-trial dates, particularly the  
15 briefing schedule pertaining to Defendant's Motion for Partial Summary Judgment ("Motion")  
16 and the hearing date for that motion. This Court issued an Order dated October 31, 2011 granting  
17 the Parties' requests, except this Court selected a hearing date of January 13, 2012 for that  
18 Motion.

19 Due to the mediation and discovery meet and confer processes that the Parties have  
20 engaged in in good faith, the Parties respectfully request that this Court further modify the  
21 following pretrial deadline dates. These proposed new deadline dates allow the Parties to  
22 complete all previously-noticed discovery. In addition, Defendant has scheduled and conducted  
23 and/or needs to conduct and/or continue sessions of depositions previously started, but not  
24 completed.

25 The Parties respectfully request modification of upcoming pretrial discovery and motion  
26 dates in order to permit the Parties additional time to pursue and complete discovery in an orderly  
27 fashion.

28 This Court modified the briefing schedule on the Motion for Partial Summary Judgment

such that Plaintiff's Opposition is now due on December 5, 2011, and Defendant's Reply is now due on December 16, 2011. Additional deadline dates ordered by this Court are currently as follows:

1. Non-Expert Discovery Cutoff: December 7, 2011
2. Deadline for Expert Disclosure: December 7, 2011
3. Deadline for Disclosing Rebuttal Experts: December 28, 2011
4. Expert Discovery Cutoff: January 12, 2012

In the interest of judicial economy, the Parties seek to avoid unnecessary discovery and motion practice scheduling conflicts.

### STIPULATION

IT IS HEREBY STIPULATED AND AGREED TO BY AND BETWEEN THE PARTIES by and through their respective counsel of record herein that:

1. Plaintiff's opposition to Defendant's Motion for Summary Judgment and Defendant's reply shall be continued to either, or as otherwise ordered by this Court<sup>1</sup>:

#### Plaintiff's Proposed Briefing Schedule

#### Defendant's Proposed Briefing Schedule

- |                                    |                                    |
|------------------------------------|------------------------------------|
| • Plaintiff's Opposition: 12/23/11 | • Plaintiff's Opposition: 12/14/11 |
| • Defendant's Reply: 1/6/12        | • Defendant's Reply: 12/30/11      |

The hearing date for Defendant's motion would continue to be January 13, 2012

2. The deadline for expert disclosure shall be continued to January 2, 2012;
3. Non-expert discovery cutoff shall be continued to December 23, 2011;
4. The last day to hear motions shall be continued to January 13, 2012;
5. The deadline for disclosing rebuttal experts shall be December 30, 2011;
6. The expert discovery cutoff shall be January 12, 2012;
7. Any other previously scheduled dates that the Court deems appropriate shall be rescheduled accordingly.

<sup>1</sup> The Parties could not reach mutually acceptable dates after meeting and conferring.

In the alternative, the Parties respectfully request that the Court schedule an emergency Case Management Conference to discuss the proposed schedules, as well as a continuance of the current trial date of January 30, 2012.

ORDER

The foregoing stipulation having been entered and good cause appearing therefor,  
IT IS HEREBY ORDERED that:

The current deadlines for this case shall be modified as follows:

1. Plaintiff's opposition to Defendant's Motion for Summary Judgment shall be continued to 12/23/11 and Defendant's reply shall be continued to 1/6/12.
2. The deadline for expert disclosure shall be continued to January 2, 2012;
3. Non-expert discovery cutoff shall be continued to December 23, 2011;
4. The hearing for Defendant's Motion for Summary Judgment shall remain on January 13, 2012;
5. The last day to hear motions shall be continued to January 13, 2012;
6. The deadline for disclosing rebuttal experts shall be December 30, 2011;
7. The expert discovery cutoff shall be January 12, 2012.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: November 23, 2011

James T. McMillan  
Attorneys for Plaintiff

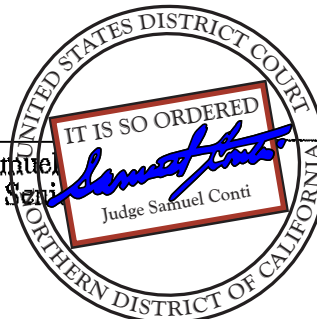
DATED: November 23, 2011

[Signature]  
Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 11/29/11

Honorable Samuel  
United States Senior Judge



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